

Bernard John Barrett (BJB 5315)
Thomas Kelly (TJK 4074)
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581
202-418-5331
202-418-5523 (fax)

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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

COMMODITY FUTURES TRADING
COMMISSION,

Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581

Plaintiff,

vs.

CLEARVIEW CAPITAL MANAGEMENT
INC., a New Jersey Corporation,

1275 15th Street, Apt. 19M
Fort Lee, N.J. 07024, and

JAMES I. WEISS

1275 15th Street, Apt. 19M
Fort Lee, N.J. 07024,

Defendants.

NO.

COMPLAINT

I. SUMMARY

1. This is a civil action brought by Plaintiff Commodity Futures Trading Commission ("Commission"), an independent regulatory agency of the United States, to enforce claims brought under the Commodity Exchange Act, as amended ("Act"), 7 U.S.C. § 1 *et seq.* (2001).

2. Since at least July 2002, Defendants James I. Weiss ("Weiss") and Clearview Capital Management, Inc. ("Clearview") (collectively "Defendants")

1 have solicited and accepted funds from retail investors to engage in speculative
2 trading of foreign currency ("forex") futures contracts. During the course of these
3 solicitations, Clearview, through its agent Weiss, made material
4 misrepresentations, and failed to disclose material facts concerning, among other
5 things, the performance record of Clearview, the qualifications of Defendant
6 Weiss, and the compensation received by Clearview.
7

8
9 3. Clearview, through its agent, Weiss, claimed to operate an extremely
10 successful business trading off-exchange foreign currency futures contracts for the
11 accounts of others. Clearview, through Weiss, fraudulently claimed continuing
12 phenomenal trading success as Clearview's trades were steadily losing its
13 customers' money. Defendant Weiss buttressed these fraudulent statements with
14 false claims that he had the experience to successfully trade foreign currency
15 futures contracts. Finally, Clearview, through Weiss, falsely represented that
16 Clearview's compensation was based on the success of its customers when
17 Clearview was in fact compensated for each customer trade.
18
19
20

21 4. Clearview used the Internet for these fraudulent solicitations. Through
22 Weiss, Clearview placed fraudulent statements on the Clearview Internet website,
23 on other Internet websites and in automatic e-mail responses to inquiries from
24 prospective customers. Clearview, through Weiss, also employed other
25 fraudulent solicitations including brochures.
26
27

28 5. By virtue of this fraudulent conduct, Defendant Weiss has violated

1 Section 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. §6b(a)(2)(i) and (iii) (2001), and
2 Commission Regulations 1.1(b)(1) and (3), 17 C.F.R §1.1(b)(1) and (3)(2002).
3
4 Because Defendant Weiss engaged in fraudulent solicitations while acting as
5 Clearview's agent, Clearview is liable for the violations of Section 4b(a)(2)(i) and
6 (iii) of the Act and Commission Regulation 1.1(b)(1) and (3) pursuant to Section
7
8 2(a)(1)(B) of the Act and Section 1.2 of the Regulations. In addition, Defendant
9 Weiss, as the controlling person of Clearview, is liable for Clearview's violations
10 of Section 4b(a)(2)(i) and (iii) of the Act and Commission Regulations 1.1(b)(1)
11 and (3), pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b).
12

13 6. Accordingly, pursuant to Section 6c of the Act, Plaintiff Commission
14 brings this action to enjoin the unlawful acts and practices of Defendants
15 Clearview and Weiss and to compel their compliance with the provisions of the
16 Act and Regulations thereunder. Plaintiff Commission also seeks an order barring
17 them from engaging in any commodity-related activity, including soliciting new
18 customers or customers' funds. In addition, the Commission seeks civil monetary
19 penalties in the amount of not more than the higher of \$120,000 or triple the
20 monetary gain to Defendants for each violation of the Act, disgorgement of
21 Defendants' ill-gotten gains, restitution to customers, prejudgment interest and
22 such other relief as this Court may deem necessary or appropriate.
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1 enforcing the provisions of the Act, as amended, 7 U.S.C. §§ 1 et seq. (2001), and
2 the regulations promulgated thereunder.

3
4 **The Defendants**

5 11. **Clearview Capital Management Inc.** is a New Jersey corporation.
6 Clearview was incorporated in 2001 and has its principal place of business at 1275
7 15th Street, Apt. 19M, Fort Lee, N.J. 07024. Clearview has been a member of the
8 National Futures Association (“NFA”), a registered Commodity Trading Advisor
9 and a Commodity Pool Operator since at least July 24, 2002.

10
11
12 12. **James I. Weiss** is a resident of New Jersey. He maintains his principal
13 business address at 1275 15th Street, Apt. 19M, Fort Lee, N.J. 07024. Weiss has
14 never been registered with the Commission or NFA in any capacity. Weiss’s
15 registration with the National Association of Securities Dealers (“NASD”) was
16 revoked on or about February 2, 1994 for non-payment of fines levied in the
17 course of an NASD enforcement proceeding.

18
19
20 **IV. FACTUAL BACKGROUND**

21 **A. Founding and Staffing of Clearview**

22 13. Weiss founded Clearview in or about July 2002. He had no experience
23 in foreign exchange futures trading and had never successfully managed money
24 for anyone else. He nevertheless opened Clearview to manage the off-exchange
25 foreign currency futures accounts of others.

26
27
28 14. Weiss immediately hired Rolandas Razhauskas, also known as

1 Rolandas Razh, to trade customer accounts for Clearview.

2 15. Razhauskas had provided Weiss with a schedule of foreign currency
3 futures trades reflecting the purported results of trading pursuant to Razhauskas'
4 personal trading method. Razhauskas prepared this summary of supposed trading
5 results by estimating how his method would have worked if he had placed these
6 trades during the period from 1998 through May 2002. He described this process
7 as the "backtesting" of his method. Razhauskas reported from this process that the
8 average annual return for his system over this time period would have been 61.4%.
9

10
11
12 **B. Operation of Clearview**

13 16. After the opening of Clearview, Weiss caused Razhauskas' purported
14 trading results to be disseminated to prospective customers in solicitation
15 materials as actual trading results. Weiss also identified Razhauskas or "Razh" as
16 the trader for Clearview. However, in or about August 2002, within weeks of the
17 opening of Clearview, Weiss terminated Razhauskas for poor trading. Following
18 the termination of Razhauskas, Weiss acted as the "Chief Trader" for Clearview.
19

20
21 17. Weiss nevertheless continued to use Razhauskas' purported trading
22 record with its extraordinary trading results to solicit prospective customers with
23 the claim that Clearview was successfully trading customer accounts.
24

25 18. Weiss also supplemented the purported trading record with false
26 numbers for subsequent months. Over time, Weiss added false reports of results
27 for months through November 2002.
28

1 19. At the same time, Weiss overstated his own credentials in customer
2 solicitations by falsely representing that he had successful trading experience and
3
4 by falsely representing that he had engaged in the business of publishing a
5 successful forex advisory newsletter for institutional investors.

6 20. Through Weiss, Clearview represented to customers that it was in the
7 business of managing funds for clients as a Commodity Trading Advisor.
8 Consistent with the custom and practice of this business, Weiss stated that
9 Clearview's compensation would be a percentage of the net profits of each
10 customer's account.
11
12

13 21. However, Clearview received a rebate from its forex dealers on each
14 customer trade. Weiss failed to disclose this compensation to Clearview's
15 customers.
16

17 22. Defendant Weiss' fraudulent solicitations convinced investors to place
18 their money under Clearview's management. Approximately 42 customers placed
19 funds under Clearview's management between July 2002 and June 2003.
20 Customers sent funds to a forex dealer to open individual accounts that Clearview
21 then traded for the customer. While Weiss was reporting successful trading,
22 Clearview's customers were in fact steadily losing money.
23
24

25 23. Weiss rehired Razhauskas as the Clearview trader for a brief period in
26 or about April 2003. Razhauskas then traded for Clearview unsuccessfully for
27 another period of weeks. Once again, Razhauskas was terminated. Razhauskas'
28

1 supposed trading record, supplemented with false results for subsequent months,
2 continued to be used in customer solicitations.

3
4 24. In June 2003, Razhauskas was again hired for a brief period to trade for
5 Clearview. His trading was again unsuccessful and he once again left Clearview.

6 25. Clearview's customers consistently lost money in the accounts managed
7 by Clearview.
8

9
10
11 **C. Specific Fraudulent Solicitations made to Customers**

12
13 26. Since at least July 2002, Weiss, through Clearview, has solicited
14 prospective customers to open forex futures trading accounts at futures
15 commission merchants ("FCMs") registered with the Commission, with such
16 accounts to be managed by defendant Clearview. At all relevant times, these
17 solicitations have falsely and misleadingly represented that Clearview had a
18 successful record of earning profits for its customers at limited risk. Moreover,
19 these solicitations have fraudulently misrepresented Weiss's qualifications and
20 Clearview's financial interest in its customers' accounts.
21

22
23 **1. Clearview's Website Solicitations**

24
25 27. At all relevant times, Clearview, through Weiss, solicited prospective
26 customers through Clearview's Internet website located at www.clearviewcap-
27 [fx.com](http://www.clearviewcap-fx.com).
28

1 28. In or before January 2003 and at other times, the Clearview website
2 falsely represented that:

3 a) Razhauskas' supposed trading record was Clearview's actual
4 trading record;

5 b) "... Mr. Weiss generated the extraordinary (36.8-79.1 per annum)
6 returns for the funds under our management;" and
7

8 c) Clearview's "Average Annual Returns [sic] Since Inception" was
9 "55%".
10

11 29. By January 21, 2003, and thereafter, Clearview's Internet website
12 falsely represented that:

13 a) Clearview "combines high yields with sophisticated risk
14 management tools, which ... limits ... other risks ..."; and
15

16 b) Clearview's "Average Annual Returns [sic] Since Inception" was
17 "55%".
18

19 30. By April 4, 2003, Clearview's Internet website fraudulently
20 represented, under the heading "CCM Performance", that:

21 a) Clearview "combines high yields with sophisticated risk
22 management tools, which ... limits ... other risks ...";
23

24 b) Clearview's "Average Annual Returns [sic] Since Inception" was
25 "58.9%";
26

27 c) Razhauskas' supposed performance from January 1998 through
28

1 May 2002, with additional figures for the months through August 2002,
2 constituted Clearview's actual performance;

3
4 d) Weiss was well-qualified with "many years of successful trading
5 experience"; and

6 e) Clearview's only compensation was its incentive fee.

7
8 31. Since at least June 27, 2003, Clearview's Internet website has
9 fraudulently represented, under the heading "CCM Performance", that:

10 a) Weiss was well-qualified with "many years of successful trading
11 experience"; and

12
13 b) "The trading concepts ... utilized by Mr. Weiss have generated
14 consistent returns for funds under management while maintaining low risk
15 profile ..."

16
17 **2. Solicitations by Clearview on Other Websites**

18 32. At various times between July 2002 and the present, Clearview, through
19 Weiss, solicited customers by means of postings or advertisements on websites
20 operated by others.

21
22 33. Clearview, through Weiss, made fraudulent representations in an
23 advertisement on the Russian language website, www.russiany.com from at least
24 the beginning of 2003 through July 2003 that:

25
26 a) Weiss was well-qualified to manage customer accounts;

27
28 b) Clearview had a record of success; and

1 c) Clearview could be expected to “bring high profits with a very low
2 risk”.

3
4 34. At various times continuing through the present, Clearview, through
5 Weiss, has made fraudulent representations in a description of Clearview’s
6 purported business on the Visibility Concepts website,
7 www.visibilityconcepts.com/managedaccounts/partners/forex/moneymanagers.html,
8 including the representations that:
9

10 a) Weiss has been successful at Clearview;

11
12 b) Clearview “combines high yields with sophisticated risk management ...
13 which ... limits the exposure to other risks”; and

14 c) Clearview’s only compensation is its incentive fee.
15

16 **3. E-Mail Solicitations by Clearview**

17 35. At various times between in or about July 2002 and the present,
18 Clearview, through Weiss, also solicited prospective customers through automatic
19 e-mail responses to customer inquiries.
20

21 36. A Clearview e-mail sent to a prospective customer on or about
22 September 7, 2002 fraudulently represented that:
23

24 a) Clearview “combines high yields with sophisticated risk
25 management tools, which ... limits ... other risks ...”;

26 b) Clearview’s “Average Annual Returns [sic] Since Inception” was
27 “63.5%”;
28

1 c) Razhauskas' purported hypothetical performance from January
2 1998 through May 2002, with additional figures for the months through
3 August 2002, constituted Clearview's actual performance; and
4

5 d) Weiss was well-qualified with "many years of successful trading
6 experience."
7

8 37. A Clearview e-mail sent to a prospective investor on November 13,
9 2002 fraudulently represented that:

10 a) Clearview "combines high yields with sophisticated risk
11 management tools, which ... limits ... other risks ..."
12

13 b) Clearview's "Average Annual Returns [sic] Since Inception" was
14 "65.5%";
15

16 c) Razhauskas' supposed performance from January 1998 through
17 May 2002, with additional figures for the months through September 2002,
18 constituted Clearview's actual performance;
19

20 d) Weiss was well-qualified with "many years of successful trading
21 experience;" and
22

23 e) Clearview's compensation was "a monthly incentive fee based on
24 net new highs of profits."
25

26 38. A Clearview e-mail sent to a prospective investor on December 7, 2002
27 fraudulently represented that:

28 a) Clearview "combines high yields with sophisticated risk

1 management tools, which ... limits ... other risks ... ;”

2 b) Clearview’s “Average Annual Returns [sic] Since Inception” was
3 “65.5%”;

4
5 c) Razhauskas’ purported hypothetical performance from January
6 1998 through May 2002, with additional figures for the months through
7 September 2002, constituted Clearview’s actual performance;

8
9 d) Weiss was well-qualified with “many years of successful trading
10 experience;” and

11
12 e) Clearview’s compensation was “a monthly incentive fee based on
13 net new highs of profits.”

14 **4. Clearview’s Other Solicitations**

15
16 39. At various times between in or about July 2002 and the present,
17 Clearview, through Weiss, also provided prospective customers with written
18 materials in addition to the information communicated by means of the Internet.

19
20 40. A Clearview brochure prepared after August 2002 fraudulently
21 represented that:

22 a) Clearview “combines high yields with sophisticated risk
23 management tools, which ... limits ... other risks ... ;

24
25 b) Clearview’s “Average Annual Returns [sic] Since Inception” was
26 “58.9%”;

27
28 c) Razhauskas’ supposed performance from January 1998 through

1 May 2002, with additional figures for the months through August 2002,
2 constituted Clearview's actual performance; and

3
4 d) Clearview's compensation was a monthly incentive fee.

5 41. A Clearview brochure prepared after November 2002 fraudulently
6 represented that:

7
8 a) Clearview "combines high yields with sophisticated risk
9 management tools, which ... limits ... other risks ... ;"

10 b) Clearview's "Average Annual Returns [sic] Since Inception" was
11 "57.8%";

12
13 c) Razhauskas' purported hypothetical performance from January
14 1998 through May 2002, with additional figures for the months through
15 November 2002 constituted Clearview's actual performance;

16
17 d) Weiss was well-qualified with "many years of successful trading
18 experience;" and

19
20 e) "There are no commissions or management fees to the Client, just a
21 monthly incentive fee"

22 42. At other times between in or about July 2002 and the present,
23 Defendants have used telephone calls to solicit investors.

24
25 **D. Summary of Defendants' Fraudulent Conduct**

26 43. Defendant Weiss' fraudulent solicitations on behalf of Clearview each
27 contained one or more of the following misrepresentations:
28

- 1 a) a promise of high returns with limited risk;
- 2 b) a false and misleading report that Clearview's trading resulted in an
- 3 average annual gain that ranged between 39% and 79%;
- 4
- 5 c) a false and misleading report that Razhauskas' supposed trades pursuant
- 6 to his trading system were actual successful trades conducted from 1998
- 7 through May 2002;
- 8
- 9 d) a false and misleading report of trading results for months after May
- 10 2002;
- 11
- 12 e) a false claim that Weiss had forex experience consistent with the
- 13 purported success of Clearview; and
- 14
- 15 f) false statements communicating that Clearview's income only resulted
- 16 from its successful trading on behalf of customers when Clearview was
- 17 always paid a rebate on each customer trade.

18 **E. Weiss's Role at Clearview**

19

20 44. At all relevant times, Weiss has been the Managing Director of

21 Clearview.

22 45. Weiss operated Clearview.

23

24 46. Weiss wrote all of Clearview's solicitations.

25 47. Weiss supervised the Clearview website.

26 48. Weiss supervised all trading at Clearview.

27

28 49. Weiss trained, hired and fired all employees of Clearview.

1 50. Weiss is responsible for the payment of the operating expenses of
2 Clearview.
3

4 51. At all relevant times, Weiss knew the results of Clearview's trading, the
5 sources of its income and the contents of its customer solicitations.
6

7 52. Weiss is the sole manager of Clearview and made all management
8 decisions for Clearview.
9

10 53. During the time of the illegal activity alleged herein, Weiss was acting
11 within the scope of his employment or office as an officer and agent of Clearview.
12

13 **V. CLAIM FOR RELIEF**

14 **Violations of Section 4b(a)(2)(i) and (iii) of the Act and**
15 **Section 1.1(b)(1) and (3) of Commission Regulations:**
16 **Fraud and Deceit in the Sale of Futures Contracts**

17 54. Paragraphs 1 through 53 are realleged and incorporated by reference.
18

19 55. From at least July 2002 and continuing to the present, Defendant Weiss
20 violated Section 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. §6b(a)(2)(i) and (iii)
21 (2001), and Regulation 1.1(b)(1) and (3), 17 C.F.R. §1.1(b)(1) and (3) (2002), in
22 that he has: (a) cheated or defrauded or attempted to defraud other persons; and (b)
23 willfully deceived or attempted to deceive other persons, by virtue of the false and
24 misleading representations set forth in paragraphs 13 through 53 above.
25

26 56. Defendant Weiss made these fraudulent misrepresentations while acting
27 as Clearview's agent. Clearview is thereby liable for Weiss' violations of Section
28

1 4b(a)(2)(i) and (iii) of the Act and Regulation 1.1(b)(1) and (3), pursuant to
2 Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2001) and Regulation 1.2, 17
3 C.F.R. §1.1(b)(1) and (3) (2002).
4

5 57. Defendants engaged in this conduct in or in connection with orders to
6 make, or the making of, contracts of sale of commodities for future delivery, made,
7 or to be made, for or on behalf of other persons where such contracts for future
8 delivery were or may have been used for (a) hedging and transaction in interstate
9 commerce in such commodity, or the products or byproducts thereof, or (b)
10 determining the price basis of any transaction in interstate commerce in such
11 commodity, or (c) delivering any such commodity sold, shipped or received in
12 interstate commerce for the fulfillment thereof.
13
14

15 58. Each fraudulent misrepresentation is alleged as a separate and distinct
16 violation of Section 4b(a)(2)(i) and (iii) of the Act and Commission Regulation
17 1.1(b)(1) and (3).59. Weiss, directly or indirectly, controlled Clearview and did
18 not act in good faith, or knowingly induced, directly or indirectly, the acts
19 constituting these violations of Section 4(b)(a)(2)(i) and (iii) of the Act, and
20 Commission Regulation 1.1(b)(1) and (3). Weiss is therefore liable for these
21 violations pursuant Section 13(b) of the Act.
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VI. RELIEF REQUESTED

1 WHEREFORE; Plaintiff Commodity Futures Trading Commission
2 respectfully requests that this Court, as authorized by Section 6c of the Act, and
3
4 pursuant to the Court's equitable powers, enter:

5 1. An order of permanent injunction prohibiting Defendants Clearview Capital
6 Management Inc. and James I. Weiss and any other person or entity associated
7
8 with them, including any successor thereof, from engaging in conduct violative of
9 Section 4b(a)(2)(i) and (iii) of the Act and Commission Regulations 1.1(b)(1) and
10 (3).

11
12 2. An order directing the Defendants and any successors thereof, to disgorge
13 pursuant to such procedure as the Court may order all benefits received from the
14 acts or practices which constituted violations of the Act, as described herein, and
15 interest thereon from the date of such violations;

16
17 3. An order directing the Defendants to make full restitution to every customer
18 whose funds were received by them as a result of acts and practices which
19
20 constituted violations of the Act, as described herein, and interest thereon from the
21 date of such violations;

22 4. An order directing the Defendants to pay a civil penalty in the amount of not
23 more than the higher of \$120,000.00 for each violation or triple the monetary gain
24
25 to Defendants for each violation of the Act;

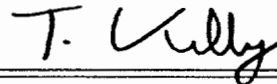
26 5. An order enjoining Defendants from engaging in any commodity-related
27 activity, including soliciting new customers or customer funds;
28

1 6. An order requiring Defendants to pay costs and fees as permitted by 28
2 U.S.C. §§ 1920 and 2412(a)(2); and

3
4 7. Such other and further relief as the Court deems proper.

5 Dated this 8th day of December 2003.

6 Respectfully submitted,

7
8
9 

10 Bernard John Barrett (BJB 5315)
11 Thomas Kelly (TJK 4074)
12 Commodity Futures Trading Commission
13 Three Lafayette Centre
14 1155 21st Street, N.W.
15 Washington, D.C. 20581
16 202-418-5331
17 202-418-5523 (fax)

18 Attorneys for Plaintiff

19 Commodity Futures Trading Commission

20 LOCAL COUNSEL:

21 Michael A. Chageres, Esq.
22 Chief of Civil Division
23 Assistant United States Attorney
24 Office of the United States Attorney
25 District of New Jersey
26 970 Broad Street
27 Suite 700
28 Newark, NJ 07101
(973) 645-2839